

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

United States of America v. John Richard Koesterman
Case No. 3:13-cr-00048-TMB-1

By: THE HONORABLE TIMOTHY M. BURGESS

PROCEEDINGS: ORDER FROM CHAMBERS

The matter comes before the Court on Defendant John Richard Koesterman's *Pro Se* Motion for Certificate of Appealability (the "Motion").¹ Koesterman requests a certificate of appealability from the Court's denial of his Motion for Compassionate Release Under 18 U.S.C. § 3582(c)(1)(A).² Koesterman also filed a Notice of Appeal.³ The United States (the "Government") did not respond.⁴ For the following reasons, the Court **DENIES** the Motion as moot.

Koesterman filed a motion for compassionate release on December 1, 2023, arguing that he was entitled to a sentence reduction under Amendment 821 to the U.S. Sentencing Guidelines and that his health issues and prison conditions were extraordinary and compelling reasons for release.⁵ The Court denied Koesterman's compassionate release motion, finding that Koesterman had not exhausted his administrative remedies, that he was not eligible for a sentence reduction under Amendment 821, that his health concerns and general prison conditions were not extraordinary and compelling reasons for release, and that the 18 U.S.C. § 3553(a) factors weighed against his release.⁶

In his Motion, Koesterman asks the Court to "grant [his] Certificate of Appealability pro se" to appeal this Court's order denying him compassionate release and "request[s] an updated docket sheet of all new docket entries and notice[s]." ⁷

Koesterman also filed a Notice of Appeal on July 16, 2024,⁸ and the Ninth Circuit has assigned a case number and set a briefing schedule for his appeal.⁹

¹ Dkt. 65 (*Pro Se* Motion for Certificate of Appealability).

² *Id.* at 1; *see* Dkt. 63 (Order Denying Motion for Compassionate Release).

³ Dkt. 64 (Notice of Appeal).

⁴ Dkt. (absence).

⁵ Dkt. 49 (Motion for Compassionate Release).

⁶ Dkt. 63.

⁷ *Id.* (emphasis in original).

⁸ Dkt. 64.

⁹ Dkt. 67 (USCA Case Number); Dkt. 68 (USCA Time Schedule Order).

A certificate of appealability is not required for Koesterman to appeal the Court's denial of his compassionate release motion. Under 28 U.S.C. § 2253(a), "[i]n a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held."¹⁰ A defendant must secure a certificate of appealability to challenge final orders "in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court" or "in a proceeding under section 2255."¹¹

The Court's denial of Koesterman's compassionate release motion under 18 U.S.C. § 3582(c)(1)(A) is not a final order in a habeas corpus proceeding nor is it a final order to a motion brought under 28 U.S.C. § 2255. Therefore, a certificate of appealability is not required for Koesterman to appeal it, and he may bring his appeal directly to the Ninth Circuit Court of Appeals. Indeed, Koesterman's appeal is already underway. After Koesterman filed his Notice of Appeal, the Ninth Circuit Court of Appeals has assigned a case number and set a briefing schedule for the matter. Therefore, the Court concludes that a certificate of appealability is unnecessary.

Accordingly, the Motion at Docket 65 is **DENIED as moot**.

Entered at the direction of the Honorable Timothy M. Burgess, United States District Judge.

DATE: September 12, 2024.

¹⁰ 28 U.S.C. § 2253(a).

¹¹ 28 U.S.C. § 2253(c)(1).